CHAPTER 90: CRITICAL AREAS UPDATE
JULY 28, 2016

PLANNING COMMISSION STUDY SESSION

AGENDA

1. Follow-up from Planning Commission meeting of June 23, 2016
2. Additional staff issues
3. Follow-up from City Council meeting of June 21, 2016
4. Houghton Community Council's comments from meeting of July 25, 2016
5. Go through last part of Chapter 90 for comments
6. Next Steps

FOLLOW-UP FROM PLANNING COMMISSION MEETING OF JUNE 23, 2016 MEETING

- **Off-Site Critical Areas**: show as estimated on survey but not surveyed

- **Table with Measures that Minimize Impacts to Wetlands** (Ecology guidance table)
  - Add reference to Chapter 95 landscape buffer standard for industrial uses
  - Use City and County regulations for toxic runoff and stormwater that reflect Ecology's general policy text

STAFF FOLLOW-UP FROM PLANNING COMMISSION MEETINGS

- **When Vegetative Buffer Standards are Required**
  - Entire buffer: Total footprint of all structures exceed 1,000 sf and building permit required
  - 1:1 ratio: Total footprint less than 1,000 sf and building permit required (same as non-conformance section)
  - Exempt: Less than 50 sf of new footprint for structures that require building permit
  - Not applicable: Structures that alone do not require building permits (decks, patios, driveways)
- **Minimum Buffer Standard for Additions to Non-conforming Structure**
  - 60% of standard buffer width (50% too small, 75% of standard is allowed for buffer averaging)

EXPANSION OF NONCONFORMING STRUCTURE

Footprint expansion

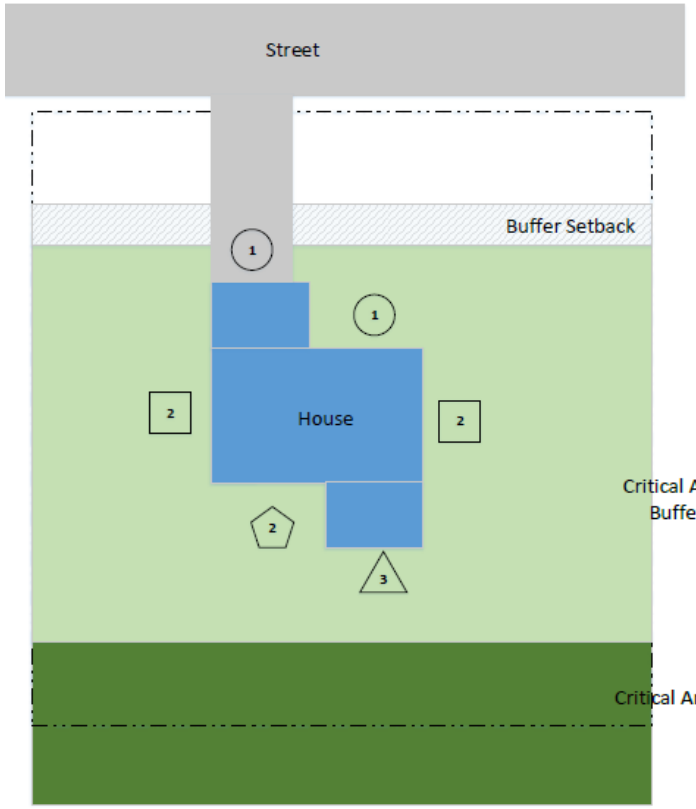
- 1,000 s.f. cap on opposite side (1)
- 500 s.f. cap if no further encroachment (2)
- 250 s.f. cap if further encroachment (3)
- Mitigate for 1,2, 3 at 1:1 ratio

Note:

-No expansion into critical area

-Minimum buffer width for (3) is 60% of required buffer standard

Nonconformance Example – Full Buffer



Order of preference when entire structure is located in Buffer:

1. House expanded on side opposite the critical area (1,000 s.f. max)
2. House expanded on the sides only if the objective of expansion cannot be accomplished with 1. (500 s.f. max)
3. House expanded further into the buffer only if objective of expansion cannot be accomplished with 1. or 2., but no closer to the critical area that the existing house (250 s.f. max)

Note – maximum footprint expansion and mitigation recommended in all cases

STAFF FOLLOW-UP FROM PLANNING COMMISSION MEETINGS

Fence along Buffer Edge

- Ecology guidance is conflicting:
  - Split rail fencing to allow wildlife habitat to move throughout area
  - Solid to partial solid fencing to prevent people and pets from going into the critical area
- City currently requires split rail:
  - Visual connection to buffer more likely results in maintenance of buffer and not dumping debris over the fence
  - Residents' enjoyment of viewing buffer and critical area = possible better overall stewards of critical area
  - Habitat corridor
- Staff called Ecology who said that given the choice, they would prefer to not have people and pets in critical area, except for maintenance
- **Staff New Recommendation**: *Allow split rail, open slatted, wrought iron, chain link or similar non-solid fence.*

  All but split rail must provide a gate for maintenance. Options provide security and keep pets and people out of critical area but also provide openness to buffer.

FENCING TYPES

NEW STAFF ISSUES

- 5' height increase currently allowance for Reasonable Use Exceptions
  - May result in structures out of character with surrounding neighborhood
  - May not result in less impact to critical area or gain in footprint
  - One potential situation that warrants additional height is very steep driveway going down to building. With additional height, can raise building & reduce driveway slope so pervious materials can be used.
- <u>Staff Recommendation</u>:
  - *Limit increase in height allowance to reducing steepness of driveway*

FOLLOW-UP FROM CITY COUNCIL COMMENTS OF JUNE 21,2016

- City Council held study session on June 21, 2016
- Following comments included in draft Chapter 90:
  1. Allow additions for non-conforming commercial and multi-family structures in buffers similar to single family
  2. Allow reduction in yard setbacks for commercial uses under Reasonable Use Exemptions similar to single family

FOLLOW-UP FROM HOUGHTON COMMUNITY COUNCIL OF JULY 25, 2016

Houghton Community Council is pleased with and complimentary of new Chapter 90

- Following individual comments from meeting:
  - Allow replacement of foundation of non-conforming structure in same location and not require foundation to be moved out of buffer to maximum extent possible (contrary to PC recommendation).
  - Clarify that replacement of non-conforming structure can be of different design as long as footprint and dimensions match existing.
  - For restoration vegetation in City parks, replacement trees and shrubs should not block views from City right-of-ways.
  - City should keep list of qualified professionals to prepare reports for public ease in finding firms.
  - Vest buffers for daylighted streams in perpetuity.

NEW STAFF ISSUES

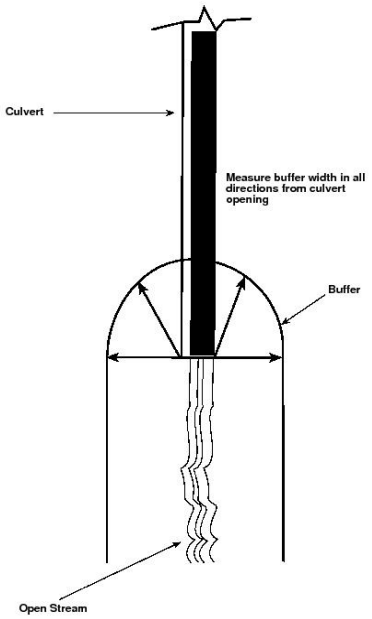
- Private Utilities (side sewer, water or power line from street to building)
  - Not addressed in June 23rd version of draft Chapter 90
  - Now added to July 28th version and mirrors public utilities standards
- List of Species of Local Importance in Fish and Wildlife Habitat Conservation Area
  - List Kirkland's species of local importance in definition rather than in section since state priority species included in section include Kirkland's local species of importance. Easier to update list in Chapter 5 definitions than Chapter 90.

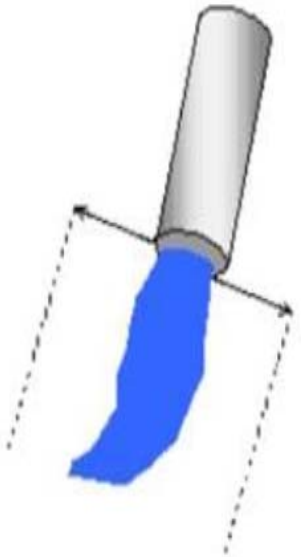
BUFFERS AT INLETS AND OUTLETS OF CULVERTED STREAMS

- **Buffers from Inlets and Outlets of Culverted Streams** (comment letter)
  - Current code requires redial buffer that wraps buffer around culverted stream (Plate 16A of Code)
  - Renton code require buffers that start perpendicular to pipe
  - Other codes are silent on prescribing buffers around culverted streams

- Staff Recommendation: Revised Plate 16A to reflect the diagram from the City of Renton and not extend buffer around culvert.

RADIAL BUFFER VERSUS PERPENDICULAR BUFFER





REVIEW OF DRAFT CODE

GENERAL STANDARDS (continued)

1. Mitigation (Pages 36-38)
2. Compensatory Wetland Mitigation (Pages 38-41)
3. Measures to Minimize Impacts to Wetlands (Pages 41-42) *Note: Ecology Model Ordinance*
4. Monitoring and Maintenance (Pages 42-44)
5. Financial Security (Pages 44-46)
6. Subdivision and Max Development Potential (Pages 46-47)
7. Reasonable Use Exception (Pages 48-53)

REVIEW OF DRAFT CODE

GENERAL STANDARDS (continued)

8. Nonconformances (Pages 53-55)
9. Critical Area Markers, Fencing and Signage (Pages 55-56)
10. Pesticides and Herbicides Use (Page 56) *Note: City and KC regulations*
11. Structure Setbacks and Buffers Required by Prior Approvals (Page 56)
12. Dedication of Critical Area and Buffer (Page 57)
13. Liability, Appeals and Lapse of Approval (Page 58)

NEXT STEPS:

- Prepare minor housekeeping code amendments to other sections of code as follow-up of new Chapter 90
- Submit draft Chapter 90 to Department of Commerce to meet 60-day state notice requirement of code amendments
- Provide draft Chapter 90 to other state agencies and tribe for comments
- Provide hearing notice to listserv (261 participants as of today), to email list which includes neighborhood associations and on web page
- Hold open house on September 8th before hearing
- Hold joint hearing with Planning Commission on September 8th and make final recommendation

FURTHER QUESTIONS? FURTHER COMMENTS?

- **Questions?**
- **Comments?**

WETLAND BUFFER WIDTH STANDARD

Current wetland buffers in KZC 90

Wetland Type	Primary Basin	Secondary Basin
1	100’	75’
2	75’	50’
3	50’	25’

Current wetland buffers in SMP

Wetland Category	Range of Buffer widths based on habitat score (feet)
I: Bogs	215
I: All others	125-215
II	100-200
III	75-125
IV	50

- ***Planning Commission Direction**: Use buffer width standards along with additional standards consistent with BAS and other local jurisdictions – see slides below.*

Recommended Wetland Buffer Standards (Ecology BAS):

Width assumes buffer is well vegetated with native plants, and contains few invasive plants and no lawn or fill.

Wetland Type	Buffer width (in ft.) baaed on habitat score 3-4	5	6-7	8-9
I: Bogs	190	190	190	225
I: All others	75	105	165	225
II	75	105	165	225
III	60	105	165	225
IV	40	40	40	40

WETLAND BUFFERS: COMPARISON OF OTHER CITIES

Comparison between proposed wetland buffers and other jurisdictions:

- **Woodinville: same standard.**
- **Redmond: slightly smaller habit 5 score but much larger 3-4 and 8-9 habitat scores.**
- **Renton: larger in one habitat score and smaller in another score.**
- **Other cities with old rating system: similar range of buffers.**

WETLAND COMPENSATORY MITIGATION: ORDER OF PREFERENCE

Compensatory Mitigation used to replace loss function of wetlands, in order of preference and should result in no net loss (BAS):

1. Re-establish or rehabilitate (Example: remove fill or dike. Does not add new wetland).
2. Creation/establish (Adds new wetland: need water source, certain slope and other factors).
3. Enhancement (Install native plantings. Results in loss of wetland but at least equal functions).
4. Preservation (Protect high functioning wetland elsewhere. Results in loss of wetland but at least equal functions).

Planning Commission Direction: *Use compensatory mitigation consistent with Ecology BAS, other local jurisdictions and Chapter 83 (shorelines).*

WETLAND COMPENSATORY MITIGATION: RATIOS OF MITIGATION

Category of Wetland Impacted	Creation	Re-establishment-Rehabilitation Only	Creation and Rehabilitation	Creation and Enhancement	Enhancement Only
Category IV	1.5:1	3:1	1:1 C and 1:1 RH	1:1 C and 2:1 E	6:1
Category III	2:1	4:1	1:1 C and 2:1 RH	1:1 C and 4:1 E	8:1
Category II	3:1	6:1	1:1 C and 4:1 RH	1:1 C and 8:1 E	12:1
Category I: Forested	6:1	12:1	1:1 C and 10:1 RH	1:1 C and 20:1 E	24:1
Category I: Bog	Not possible	6:1 RH of a bog	Not possible	Not possible	Case-by-case
Category I: based on total functions	4:1	8:1	1:1 C and 6:1 RH	1:1 C and 12:1 E	16:1 E
Buffer					1:1

Legend: C = Creation, RH = Rehabilitation, E = Enhancement

Planning Commission Direction: *Use mitigation ratios for impacts to wetland and/or their buffers which is consistent with Ecology BAS, other local jurisdictions and Chapter 83 (shorelines).*

STREAM BUFFER WIDTH STANDARDS

Current Stream Buffers in KZC 90

Stream Class	Buffer width for streams in primary basin (feet)	Buffer width for streams in secondary basin (feet)
A	75	N/A
B	60	50
C	35	25

Current Stream Buffers applicable to annexation area in SMP

Stream Type	Buffer width (feet)
F	115
Np	65
Ns	65

Recommended Stream Buffer Standards (BAS):

Width assumes buffer is well vegetated with native plants, and contains few invasive plants and no lawn or fill.

Stream Type	Buffer Width
F (contains fish)	100 feet
Np (No fish – perennial)	50 feet
Ns No fish – seasonal)	50 feet

Planning Commission Direction: *Use recommended buffer width standards, along with additional standards, which is consistent with BAS and other local jurisdiction – see slides below.*

STREAM BUFFERS: COMPARISON OF OTHER LOCAL CITIES

Comparison between proposed stream buffers and other jurisdictions :

- F Stream:
  - Same as recommended: Bellevue, Bothell, Kenmore, Federal Way
  - Wider than recommended: Redmond, Sammamish, Woodinville and King County
- Np Stream:
  - Same as recommended: Bellevue, Bothell, Kenmore, Federal Way
  - Wider than recommended: Six other jurisdictions, including Redmond and Woodinville
- Ns Stream:
  - Same as recommended: Woodinville, Sammamish and Bothell
  - Wider than recommended: Six other jurisdictions

ADDITIONAL STANDARDS FOR WETLAND AND STREAM BUFFERS

- **Meet vegetative standard -** see upcoming slide**.**
- **Implement 9 measures to minimize impacts -** see upcoming slide**.**
- **Option of buffer averaging by reducing one area down to ¾ (75%) of buffer width while increasing other area so that total buffer area is provided** (provides development flexibility) – see upcoming slide.
- **Option of not meeting vegetative standard and 9 minimizing standard by increasing buffer width by 33%** (provides choice to not plant or meet minimizing standards).

Planning Commission Direction: *Require additional standards which is consistent with Ecology BAS and other local jurisdictions.*

ADDITIONAL STANDARDS: VEGETATIVE STANDARD

Vegetative Standard

- Native cover of at least 80% on average throughout the buffer area with 2 out of 3 of the following strata of native plant species composing of at least 20% areal cover:
  - Multi-age forest canopy (combination of existing and new vegetation)
  - Shrubs
  - Woody groundcover or unmowed herbaceous groundcover
- Less than 10% noxious weeds cover using King County weed list (require removal of knotweed - very invasive)
- At least three native species each making up a minimum of 10% cover (for diversity)
- Removal of lawn (source of fertilizers, fecal coliform from pets and herbicides detrimental to wetlands and streams)

➢ Allow **alternative plan** for unique circumstances based on criteria and meets intent of vegetative standard.

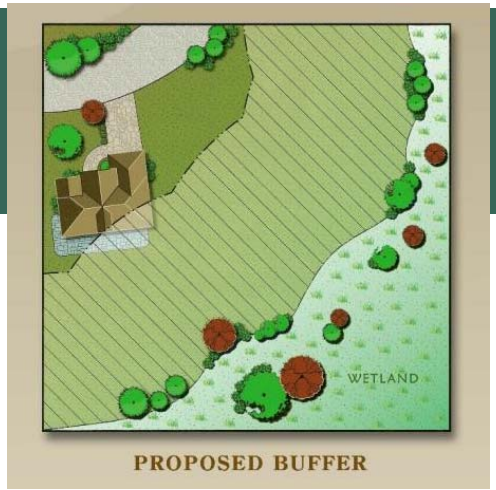
ADDITIONAL STANDARDS: NINE MEASURES TO MINIMIZE IMPACTS

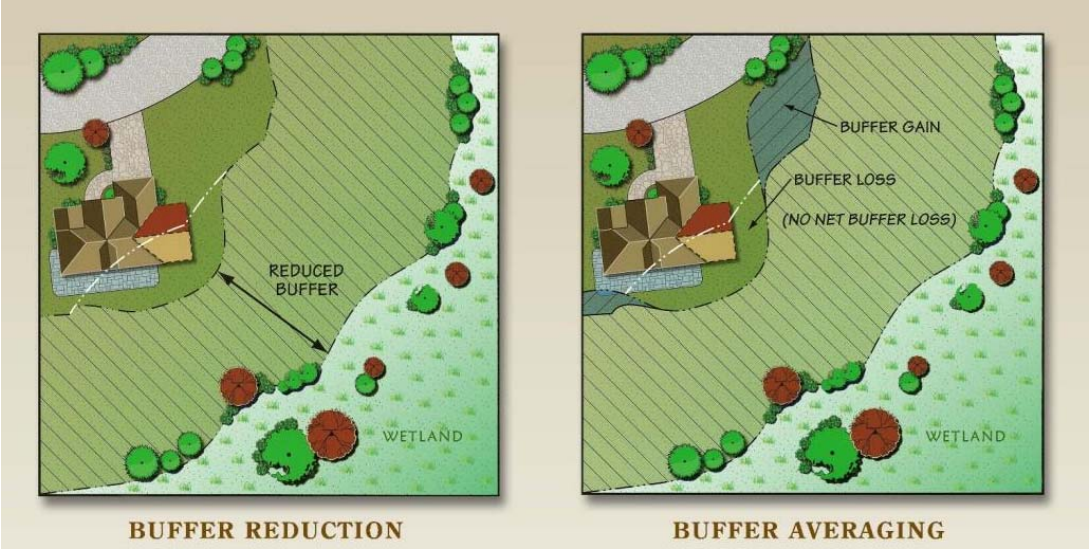
Disturbance	Required Measures to Minimize Impacts (Ecology BAS)
Lights	• Direct lights away from wetland
Noise	• Locate outdoor activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source
Toxic runoff	• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 feet of wetland • Apply integrated pest management
Stormwater runoff	• Retrofit stormwater detention and treatment for roads and existing development adjacent to the site • Prevent channelized flow from lawns that directly enters the buffer • Use Low Intensity Development techniques (per Puget Sound Action Team publication on Low Impact Development techniques)
Change in water regime	• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	• Use fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion • Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	• Use best management practices to control dust
Disruption of corridors or connections	• Maintain connections to offsite areas that are undisturbed • Restore corridors or connections to offsite habitats by replanting

BUFFER DEVIATIONS: BUFFER AVERAGING

- **Buffer Averaging Option (Ecology BAS)**
  - Narrowest point is never less than ¾ of required width and total area of buffer after averaging = area required without averaging.
- **Buffer Reduction Not Option**
  - Buffer reduction for entire buffer area not an option because proposed buffer width is minimum needed to protect critical area.
- Other local cities: most allow buffer averaging. Only a few allow overall reduction

Planning Commission Direction: *Allow buffer averaging, which is consistent with Ecology BAS and other local jurisdictions. Do not allow buffer reduction of entire buffer.*





BUFFER DEVIATIONS:
BUFFERS FOR CERTAIN STREAM MODIFICATIONS

Streams

- City encourages removal of stream from culvert and then daylighting the stream.
- Applicant may need to alter course (meandering) to stop erosion.

- Buffer width requirements and impacts on adjacent property owners prevent stream daylighting or altering stream course.
- WDFW will consider "reasonable buffer widths" for these situations on a case by case basis.
- Adjacent properties should be exempt from new or increase in buffers due to daylighting or altering stream course.

Planning Commission Direction: *Determine buffer widths for these stream modifications on a case by case basis. Do not require new or increased buffer widths on adjacent properties due to modifications.*

BUFFER DEVIATIONS:
BUFFER DIVIDED BY ROAD OR BUILDING

Intervening existing public or private roads or buildings may be located in a buffer.

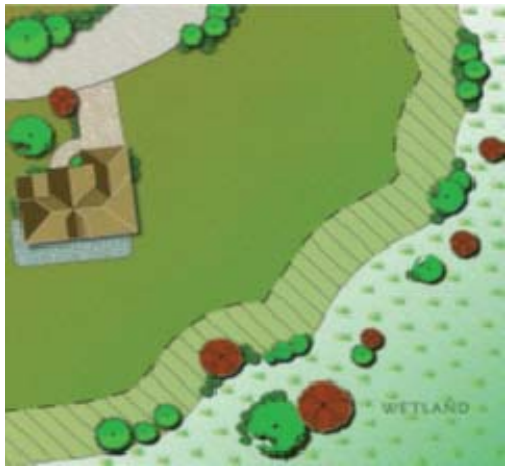
Portion of buffer separated from critical area by intervening road or building is often **not ecologically connected** to the critical area.

Planning Commission Direction: *Allow waiver to buffer standards for that portion of buffer separated from the critical area by some intervening public or private roads or buildings if buffer not ecologically connected to the critical area.*

BUILDING SETBACK FROM BUFFER

- Building setback from buffer required (based on BAS) so that buffer is not impacted by the following:
  - Installation of improvements
  - Activities associated with improvements
  - Repair and maintenance of improvements

- Existing Chapter 90 requires a 10' setback from buffer, which is adequate
  - Other local jurisdictions require 15' or 20' which staff thinks is more than necessary
  - City has flexibility in the width of the setback



Setback from buffer is in striped area

Planning Commission Direction: *Continue requiring 10' setback from buffer edge consistent with most jurisdictions and Ecology BAS.*

MINOR IMPROVEMENTS IN BUILDING SETBACK FROM BUFFER

- Existing Chapter 90 states what minor improvements can be in setback from buffer:
  - Walkways, pedestrian bridges, benches
  - Similar features as determined by the Planning Official

- Minor improvements that staff has allowed as similar features:
  - Ground level decks, patios and associated railings can extend 5' into the 10' setback
  - Chimneys, bay windows, eaves, 2nd floor decks, cornices, awnings and canopies can extend 18" into the 10' setback
  - Flag poles, rockeries 4' and under, garden sculpture, light fixtures, trellises, non-native landscaping
  - Driveways, parking areas and stormwater conveyances

ADDITIONAL MINOR IMPROVEMENTS IN SETBACK FROM BUFFER

- Other minor improvements that should be allowed are under KZC 115.115 Required Yards with maximum encroachments listed on page 14 of staff memo

- Also children's play area extending 9 feet into building setback from buffer

- No improvement should be closer than one (1) foot from buffer edge to avoid intrusion into buffer

Planning Commission Direction: *Allow minor improvements outright in buffer setback area with maximum encroachment standards as listed on page 14 of staff memo consistent with other jurisdictions and Ecology BAS.*

CRITERIA FOR MINOR IMPROVEMENTS IN SETBACK FROM BUFFER

- Existing criteria for allowing minor improvements in buffer setback include no degradation of habitat or water quality functions of buffer (KZC 90.45.2 and 90.90.2)

- This is not purpose of setback from buffer so criteria should be deleted. Purpose is to provide area for installation and maintenance of structures and outdoor activities without going into the buffer

Planning Commission Direction: *Delete criteria referencing degradation of habitat or water quality functions of buffer*

MITIGATION SEQUENCING

- Mitigation Sequencing (Ecology BAS)

Analysis to reduce impacts within framework of project's objectives, in order of preference

- ***Planning Commission Direction:*** *Include mitigation sequencing for impacts to critical areas and/or their buffers, which is consistent with Ecology BAS, other local jurisdictions and Chapter 83 (shoreline)*

OFF SITE CRITICAL AREA MITIGATION: WETLAND BANKS AND IN-LIEU-FEE

3rd Party Mitigation (Off-site)

- Finding mitigation sites to compensate for wetland loss or impacts inside Kirkland city limits often not achievable. Currently off-site mitigation outside Kirkland is not permitted.
- BAS supports allowing third-party responsible mitigation programs outside Kirkland city limits in Kirkland's watershed:
  - Wetland banks (applicant pays into program/operated by private parties or non-profits /oversight by public agencies/mitigation implemented mostly in advance of project)
  - In-Lieu-Fee (applicant pays into program/ sponsored by public agency or jurisdiction /oversight by public agencies/mitigation implemented concurrent or post project)

- ***Planning Commission Direction:*** *Allow wetland banks and in-lieu for mitigation when on-site mitigation is not possible, consistent with BAS and other local jurisdictions*

OFF SITE CRITICAL AREA MITIGATION: ADVANCE MITIGATION

Advance Mitigation

- BAS also supports applicant responsible Advance Mitigation within Kirkland's watershed.
  - Advantages:
    - No temporal loss of wetland functions
    - May cost less than purchasing credits in third-party programs in the future, since land costs escalate over time
    - Potential City owned sites: Forbes Creek and Juanita Bay wetlands
  - Disadvantages:
    - City must create and administer approach to calculate and account for mitigation for over time
    - Relies on City Council funding and budgeting for public site acquisition, permitting, design and construction in advance of the need
- Bellevue allows Advance mitigation for City park projects only. Not codified in other cities surveyed.

Planning Commission Direction: *Allow advance mitigation option for public projects only, as interim step before making it available to other applicants, to understand the complexity of administration.*

PRIORITY FOR OFF SITE MITIGATION

Prioritization of Compensatory Mitigation

- BAS recognizes that mitigation location should be prioritized dependent on which site provides the highest ecological benefits:
  - Small degraded wetland mitigation may be more sustainable if located within larger watershed (Cedar and Sammamish River basins).
  - Wetlands that serve complex habitat functions, maintain water quality, or manage hydrology to limit localized flooding should be mitigated on site or within the City.
- BAS acknowledges that in-kind mitigation (replacing like function and value of wetland loss) is preferred.
- Other jurisdictions prioritize location and type of compensatory mitigation. Redmond limits to within their jurisdiction.

Planning Commission Direction : *Prioritize mitigation location and type which is consistent with BAS and other cities:*

- *On-site in kind*
- *Off-site in City in-kind*
- *Off-site within watershed in-kind*

ENDANGERED, THREATENED OR SENSITIVE SPECIES

- Under GMA must protect fish and wildlife habitat conservation areas
- Management plans must be addressed in critical area reports and implemented
  - Buffer zone
  - Preservation of vegetation and/or habitat features
  - Limit access to habitat area, including fencing
  - Seasonal restrictions of construction activities
  - Periodic review of mitigation activities
  - Performance bond to ensure completion and mitigation of success

FISH AND WILDLIFE HABITAT CONSERVATION AREAS (GMA)

- **Federally endangered, threatened or sensitive species** as determined by U.S Fish and Wildlife Services and National Marine Fisheries.

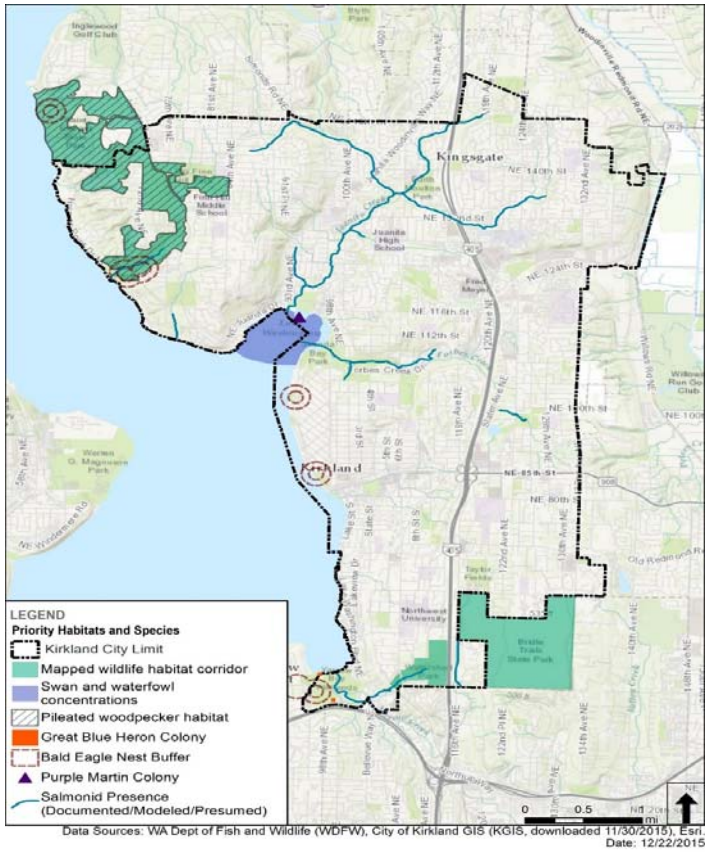
- **State designed endangered, threatened and sensitive species** as identified by Washington Department of Fish and Wildlife (WDFW).

- **Habitat and Species of Local Importance** as identified by a local jurisdiction or nominated by an individual or group.

ENDANGERED, THREATENED OR SENSITIVE SPECIES

- Eagles are sensitive species and are located in various places along the shoreline Kirkland, but staff has been told that they will be de-listed by end of year.
- Chinook Salmon and Steelhead are threatened species that may occur in several of Kirkland's streams.
- All other local jurisdictions have regulations that address endangered, threatened and sensitive species, and reference state and federal management plans.

Planning Commission Direction: *Regulate these species by referencing state and federal management plans as mandated by GMA which is consistent with Ecology BAS and other local jurisdictions.*



SPECIES OF LOCAL IMPORTANCE

GMA requires listing of species of **local importance** or at least have a nomination process

Kirkland's Potential Species of Importance are (see BAS report):

Fish:

- Coho salmon (federal species of concern)
- Sockeye/kokanee salmon (state concern status)
- Cutthroat trout (priority species, but no other state or federal status)

Priority Species:

- Pileated Woodpecker (candidate for priority species); habitat located in Finn Hill
- Great Blue Heron (monitor for priority species); habitat located in Yarrow Bay Wetland Park
- Purple Martin (candidate for priority species); habitat located in Juanita Bay (only one mapped occurrence)
- Trumpeter Swan (no state or federal status); habitat located in Juanita Bay

Data Sources:
1. City of Kirkland GIS, downloaded 11/30/2015.
2. The Watershed Company. August 2014. Fish Passage at City of Kirkland Road and Trail Stream Culverts-Preliminary Assessments.
3. Washington Department of Fish and Wildlife. July 2015. Fish Passage Barrier Inventory.
Service layer source: Esri

Date: 12/11/2015

SPECIES OF LOCAL IMPORTANCE: LISTING SPECIES

- ***Planning Commission Direction:*** *protect local fish and priority species by listing the 3 fish and Bald Eagle, Pileated Woodpecker and Great Blue Heron as species of local importance.*

  Implications:

  - Management plans from WDFW would need to be implemented for projects within their habitat.
  - For the fish, stream and wetland buffers will be sufficient.
  - For wildlife habitat, in limited cases additional buffer or other measures may be required beyond the wetland and stream buffers.

- Redmond, Bellevue, Woodinville, Kenmore and Kent all have a list of local species.

- ***Planning Commission Direction:*** *Regulate these species as species of local importance by referencing state and federal management which is consistent with GMA and other local jurisdictions.*

SPECIES OF LOCAL IMPORTANCE: NOMINATION PROCESS

- GMA requires at least a nomination process for species of local importance.
- Redmond, Bellevue and Woodinville have nomination process with criteria using a code amendment process along with a listing of local species of importance.
- ***Planning Commission Direction:*** *provide a nomination process with criteria that documents why the species should have local protection using code amendment process or simpler process to add species to Chapter 90 which is consistent with GMA and other local jurisdictions.*

REGULATED USES AND ACTIVITIES

- **Issue: list the uses and activities to which regulations apply.** Ecology's sample ordinance recommends:
  - Removal, excavation, grading or dredging of material of any kind;
  - Dumping of, discharging of, or filling with any material.
  - Draining, flooding, or disturbing the water level or table;
  - Construction, reconstruction, demolition, or expansion of any structure;
  - Destruction or alteration of wetland vegetation.
  - Activities that significantly change water temperature, physical or chemical characteristic of the sources of water to the wetland, quantity, timing or duration of water entering the wetland/stream; introduction of pollutants.
  - Subdivisions and short plats
- ***Planning Commission Direction:*** *incorporate list, but define the term "significant" if used.*

EXEMPTED USES

Exempted uses are activities and uses in critical areas or their buffers that are deemed to have little or no environmental impacts (on water, soil, or vegetation) are temporary, or an emergency.

- No separate critical area authorization or permit is required.
- Reviewed with underlying permit (grading or building) or if no underlying permit, allowed outright.
- Subject to Best Management practices for erosion control and water quality protection.

Issues :

- Add purpose section
- Clarify which uses require no prior planning official authorization vs those that do (see following slides)
- Clarify that best management practices are required (erosion control and water quality protection, and restoration of disturbed areas.)
- Issue a formal authorization to allow restoration and mitigation to be tracked.
- clarify what constitutes maintenance and repair.
- Clarify that new and existing structures and uses cannot expand into areas not previously disturbed (except HVAC units).

EXEMPTED USES

- Establish a timeline for restoration. Complete w/in 90 days of site disturbance.
- Clarify that foundation replacement is subject to non-conformance provisions
- Clarify that maintenance of utilities in public rights-of-way and utility corridors are exempt
- Require retroactive mitigation for emergencies. Complete w/in one year from date of emergency
- Consider new exemptions for maintenance and new non-motorized Park trails, and trials connecting to the CKC and Eastside rail corridor

Planning Commission Direction: Incorporate these issues into the update

FOLLOW UP ON EXEMPTED USES

Staff is developing **two tiers of uses and activities** in critical areas and their buffers:

- **Exemptions** – allowed without permit, but subject to Best Management Practices
- **Permitted uses subject to standards** – requires Planning Official approval, is subject to mitigation sequencing and compensatory mitigation. These uses and activities have more than a minimal impact on critical areas and their buffers and therefore are subject to standards.

Consistent with BAS and how other municipalities handle hierarchy of uses.

Planning Commission Direction: *PC has not considered. Will do so at next meeting in June.*

EXEMPTIONS

Proposed Exemptions:

- Repair and maintenance of all existing structures in critical areas or buffers (painting, reroofing, replacing windows, etc)
- Lawn mowing and garden maintenance within already disturbed areas.
- Public streets – repair maintenance, reconstruction of existing roads, bike lanes, sidewalks, and access easements in existing improved rights of way
- Public Utilities – repair maintenance, reconstruction and new utility structures and systems in existing improved r-o-w or utility corridors
- Park trails – repair and maintenance of existing.
- Addition of HVAC equipment, if no feasible alternative, as far as possible from critical area, does not exceed 9 s.f.
- Site investigative work for land use applications
- Passive outdoor recreational activities
- Emergency activities

Planning Commission Direction: *PC has not considered. Will do so at next meeting in June.*

PERMITTED USES WITH STANDARDS

Proposed Permitted Uses with Standards

- Private non-motorized trails, stream crossings, benches, wildlife viewing areas - outer 25% of buffer
- Public Park non-motorized trails, stream crossings, benches, wildlife viewing areas - outer 25% of buffer
- New sewer and water lines required for gravity flow - as far as possible from critical area edge
- Drilling for utilities under critical areas – entrance exit portals completely outside buffer
- Storm water management runoff treatment or flow control & stormwater outfalls – working through with Public Works to match new storm water manual
- CKC new public non-motorized trails – no expansion of existing permanent disturbance area

Planning Commission Direction: *PC has not considered. Will do so at next meeting in June.*

SINGLE FAMILY NONCONFORMANCES

Issue: Address existing improvements in the buffer or buffer setback. Wider buffer = more nonconformances

Current rules:

- Existing, legally installed, improvements are grandfathered
- Maintenance and repair of those improvements is allowed
- Maintenance and repair does not include replacement, reconstruction, restoration following casualty if +50% damage
- Expansion of nonconformance not allowed

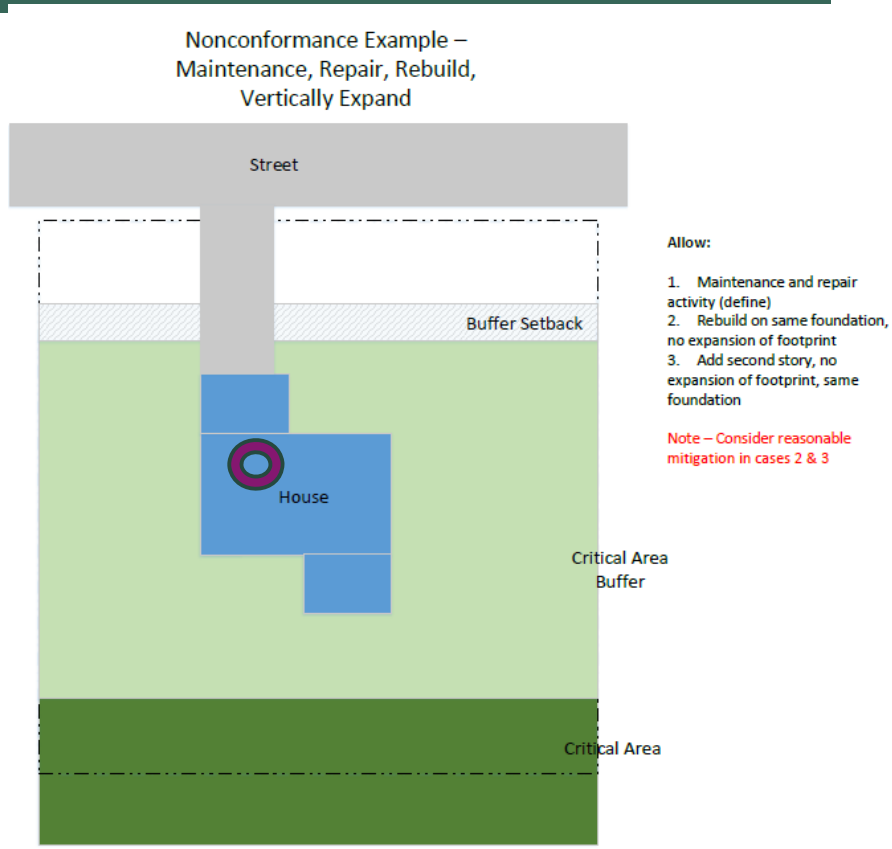
SINGLE FAMILY NONCONFORMANCES

Example #1 – Same footprint

- Maintenance/repair
- Rebuild on same foundation
- Within existing footprint (donut, 2nd story…)
- Minor changes above grade (bay window, eave…)

*Note –If proposal does not fit, move to modification, averaging or reasonable use

Planning Commission Direction: *Allow - consistent with many local jurisdictions*



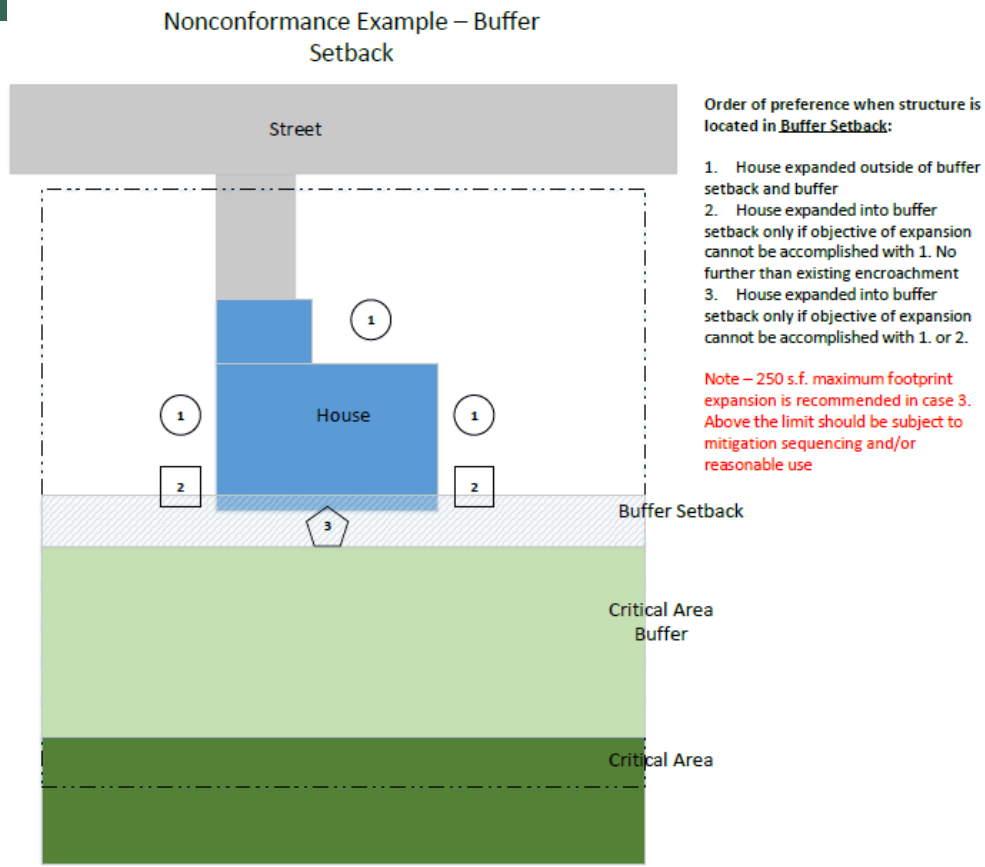
SINGLE FAMILY NONCONFORMANCES

Example #2 – Footprint Expansion in buffer setback

- Require sequencing approach in order of preference
- 250 s.f. cap if further encroachment (3)
- Mitigate for (3)

City of Bellevue uses this mitigation sequencing approach.

- *<u>Planning Commission Direction</u>: Allow - consistent with Bellevue and comparable to other local jurisdictions*



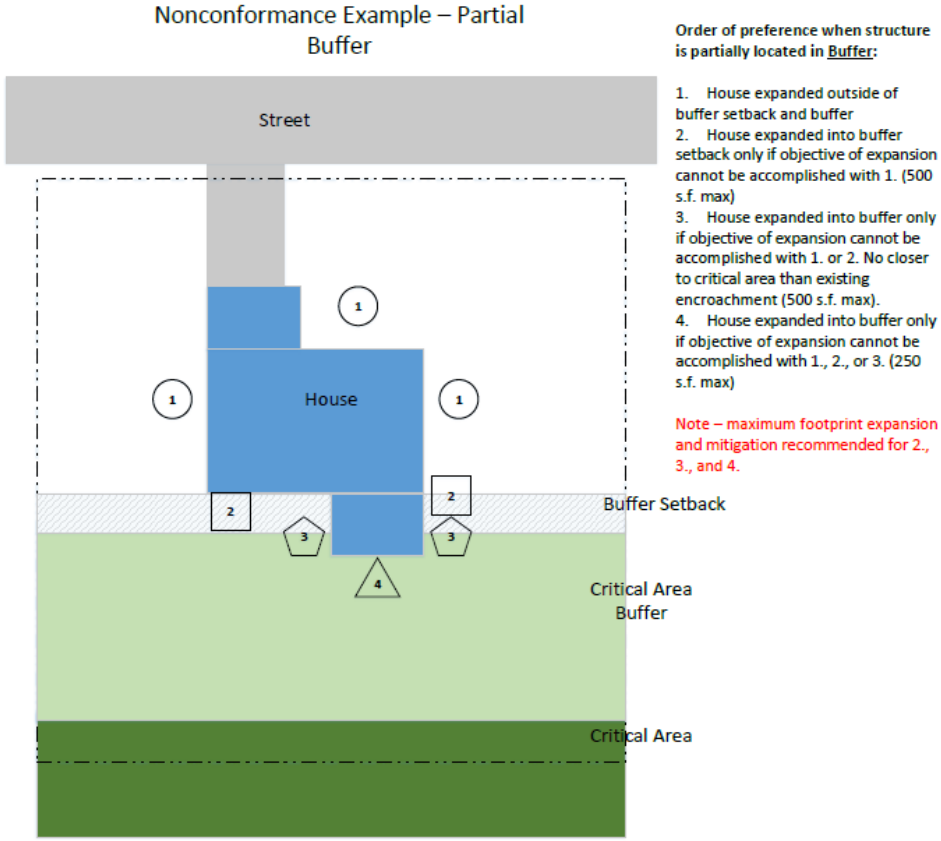
SINGLE FAMILY NONCONFORMANCES

Example #3 – Footprint expansion with partial buffer

- Require sequencing approach in order of preference
- 500 s.f. cap if no further encroachment (2 & 3)
- 250 s.f. cap if further encroachment (4)
- Mitigate for (2), (3), (4)

City of Bellevue uses this mitigation sequencing approach.

- *Planning Commission Direction:* *Allow - consistent with Bellevue and comparable to other local jurisdictions*



SINGLE FAMILY NONCONFORMANCES

Example #4 – Footprint expansion with full buffer

- Require sequencing approach in order of preference
- 1,000 s.f. cap on opposite side (1)
- 500 s.f. cap if no further encroachment (2)
- 250 s.f. cap if further encroachment (3)
- Mitigate for 1,2, 3

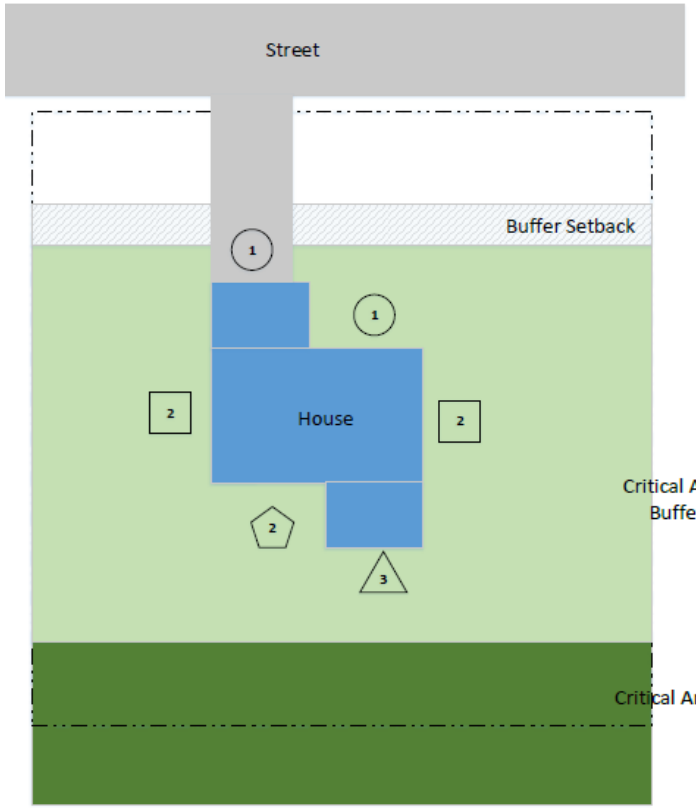
City of Bellevue uses this mitigation sequencing approach

Planning Commission Direction: Allow - consistent with Bellevue and comparable to other local jurisdictions

Notes:

- Expansions into wetland (fill) not permitted
- Minimum buffer width must be established (e.g. - current buffers width, 50% of buffer, etc.)
- Consider similar for other uses, but retain current 50% threshold on replacement cost

Nonconformance Example – Full Buffer



Order of preference when entire structure is located in Buffer:

1. House expanded on side opposite the critical area (1,000 s.f. max)
2. House expanded on the sides only if the objective of expansion cannot be accomplished with 1. (500 s.f. max)
3. House expanded further into the buffer only if objective of expansion cannot be accomplished with 1. or 2., but no closer to the critical area that the existing house (250 s.f. max)

Note – maximum footprint expansion and mitigation recommended in all cases

REASONABLE USE EXCEPTION

- Legal concept articulated in courts on regulatory takings cases that would otherwise prevent any use or development of the property.

- Balance between the property owner's viable use of land versus harm from impact as described on page 19 of staff memo and KZC 90.40.2

- City's current reasonable use exception allows the following uses with application of Chapter 90:
  - Single family use in residential zone
  - Office use in commercial or industrial zones

REASONABLE USE EXCEPTION

- Existing regulations limit development to the following area of disturbance:

Lot Size	Area of Disturbance
Less than 6,000 sq. ft. lot	50% of the lot area can be disturbed
Between 6,000 and 30,000 sq. ft. lot	3,000 sq. ft. area can be disturbed
Larger than 30,000 sq. ft. lot	Between 3,000 sq. ft. area and 10% of the lot area can be disturbed, determined on a case by case basis.

- Area of disturbance includes grading, utilities, building and paved areas, decks and landscaping.

ISSUES WITH EXISTING REASONABLE USE REGULATIONS

1. Allow reasonable use in office and institutional zones

   -Same impacts by zone. Other jurisdictions allow them.

2. Apply to limited retail uses in commercial and industrial zones (see public comment letter)

   -Similar impacts as office if retail is limited to low intensity uses.

   - Retail uses that would be inappropriate include gas stations, drive-thru, and outdoor activities.

3. Allow off-site mitigation elsewhere in Kirkland or in regional watershed

   -Most sites have little to no area to do mitigation on-site and Chapter 90 only permits off-site in same drainage basin.

4. Change lapse of approval to match other zoning permits

   -Requires submittal of building permit in 1 year with a 1-year extension. Other permits give 5 years.

ISSUES WITH EXISTING REASONABLE USE REGULATIONS

5. Allow modification to garage width standards (garage not > than 50% of front façade width)

   -Need flexibility similar to lots less than 55' wide which are already exempted from standard.

6. Clarify that reasonable use exception not applicable for lots created through a subdivision

   -Exception is for existing lots and not newly created lots.

7. Clarify that reasonable use exception can only be on a legal building site

   -Some property owners own several contiguous lots that are constrained by Chapter 90 regulations.

   Each lot must meet definition of legal building site to be eligible for reasonable use.

- ***Planning Commission Direction****: Revise Reasonable Use regulations as described in issues 1-7 above*

MAXIMUM DEVELOPMENT POTENTIAL: CONTINUE REGULATION AND CLARIFY

- The Maximum Development Potential (MDP) formula establishes the maximum potential number of dwelling units on a site that contains citical areas or their buffers.
- MDP reduces density otherwise allowed in the underlying zoning district to preserve and protect the critical area.
- Existing Subdivision and Zoning regulations may be applied to the MDP base dwelling unit count to increase the potential number of lots (existing practice).
  - Size, lot averaging, small lot single-family, and low impact development subdivision flexibility standards
  - Cottage development and LID zoning regulations

Planning Commission Direction: *Continue practice and clarify that base density can potentially be increased using existing Subdivision and Zoning provisions.*

MAXIMUM DEVELOPMENT POTENTIAL: DIMENSIONAL REDUCTIONS

Dimensional Reductions

Planning Commission Direction: *Offset loss of development potential resulting from larger buffer widths by reducing dimensional standards:*

- Minimum required yards
  - Zero lot line for interior lot lines to achieve clustering between units
  - Front – 10 feet
  - Side and rear - 5 feet
- Minimum parking pad dimensions
  - Width - 8.5 feet per required stall
  - Depth - 18.5 feet per required stall
- Tandem parking where stalls are shared by the same dwelling unit

Bellevue and Woodinville allow dimensional reductions outright.

EFFECT OF CODE AMENDMENTS ON PRIOR APPROVAL AND PENDING PERMITS

- Attachment 7 is memo providing guidance on effect of code amendments on prior approvals and pending permits.
- Clearest path to vesting under state law is a "complete" building permit application as determined by the City.
- Under current Chapter 90, buffers approved as part of zoning permits or subdivisions apply to "original construction" at the time of the permit, but not future construction.
- Based on case law, pending subdivision application that the City "determines to be complete" is vested under the code at the time of completeness.